

INTERNATIONAL METALS & ENERGY

IBLA 88-84

Decided April 25, 1990

Appeal from an October 26, 1987, decision by the Utah State Office, Bureau of Land Management, declaring mining claims U MC 278157 through U MC 278160 abandoned and void.

Set aside and remanded in part; reversed in part.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Assessment Work

When a single mining claim has been recorded with BLM pursuant to 43 U.S.C. § 1744 (1982), on two occasions and given two mining recordation serial numbers, the files should be merged and one of the serial numbers canceled. If between the two serial numbers all requisite filings have been made, the claim should not be deemed abandoned pursuant to 43 U.S.C. § 1744(c) (1982).

2. Evidence: Presumptions--Evidence: Sufficiency--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Assessment Work

The BLM manual requires the issuance of a receipt for affidavit of assessment work. Thus, where BLM date stamps and returns a cover letter which lists the affidavits of assessment submitted for filing without noting thereon or in the case file that any of the documents referred to in the letter were not enclosed, it is presumed that the return of the cover letter was intended to acknowledge receipt of all the documents listed therein.

APPEARANCES: Fred J. Backhaus, Wichita Falls, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

International Metals & Energy has appealed an October 26, 1987, decision of the Utah State Office, Bureau of Land Management (BLM), declaring abandoned and void mining claims U MC 278157 through

U MC 278160. 1/ Exhibit A to the BLM decision asserts that in 1985 no evidence of assessment work was filed for U MC 278157 (DV No. 244) and in 1986 no such filing was made for U MC 278158 through U MC 278160 (DVA Nos. 18 through 20).

Pursuant to 43 U.S.C. § 1744 (1982) and 43 CFR 3833.2-1 the holder of an unpatented mining claim located on public land is required to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. Failure to timely file one of the documents constitutes abandonment of the claim. 43 U.S.C. § 1744(c) (1982), 43 CFR 3833.4.

In its statement of reasons (SOR) on appeal appellant asserts that the cited documents were timely filed in the appropriate years. Appellant attaches photocopies of various documents in support of its position.

A certificate of location was filed for DV No. 244 on January 12, 1983, and the claim was assigned recordation serial number U MC 261487. In 1983, a notice of intent to hold was filed for U MC 261487, and in 1984 and 1985 affidavits of labor were filed under that serial number. On June 27, 1984, an amended notice of location for DV No. 244 was filed 2/ and the claim was assigned serial number U MC 278157. In 1986 and 1987 appellant filed evidence of assessment work for DV No. 244, utilizing the U MC 278157 serial number. All of the relevant documents refer to the claim by the name DV No. 244.

[1] We have previously held that when a single mining claim has been recorded with BLM on two occasions and assigned two serial numbers, the proper procedure is to merge the respective files and cancel one serial number. If, on a combined basis, all requisite filings have been made, the claim should not be deemed to be abandoned pursuant to 43 U.S.C. § 1744(c) (1982). Michael R. Flynn, 92 IBLA 327 (1986); Ralph C. Memmott, 88 IBLA 377 (1985). The BLM decision declares U MC 278157 abandoned and void for failure to file proof of labor in 1985; however, appellant filed the necessary document under serial number U MC 261487 in 1985. Thus, we set aside BLM's decision with respect to DV No. 244.

BLM declared DVA Nos. 18, 19, and 20 abandoned and void because no evidence of assessment or notice of intent to hold for the claims was filed in 1986. On appeal, appellant submitted a copy of a letter dated July 10, 1986, to BLM which lists the affidavits of assessment for six sets of

1/ Claims U MC 278158 through U MC 278160 are located in sec. 8, T. 6 N., R. 19 W., Salt Lake Meridian, Box Elder County, Utah. Claim U MC 278157 is located in the SW¹/₄, sec. 10., T. 6 N., R. 19 W., Salt Lake Meridian, Box Elder County, Utah. All four are lode claims.

2/ The final sentence of the June 27, 1984, notice of location states, "This Notice hereby abandons the previous DV No. 244, which was resurveyed to correct certain deficiencies in the prior surveys."

mining claims along with a copy of the 1986 affidavit for the three claims at issue. The letter has a BLM time date-stamp on it which shows that the letter was received July 17, 1986, and a stamped notation which reads "copy for you record." The proof of labor contains the county date-stamp of June 18, 1986.

Appellant maintains that the 1986 affidavit of assessment and cover letter evidence that the filing was timely made as shown by the date-stamped returned copy of the cover letter. The letter reads as follows: "I am enclosing the proof of labor documents that have been recorded in Box Elder County, Utah in Book 15 pages 306-309, 312-324 and 350-354 for the 1986 assessment year. These affidavits are for the following claims: * * *." Among the claims listed are DVA No. 18, 19 and 20, for which 1986 proof of labor was recorded in book 15 at page 324.

[2] Administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents. H.S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This presumption is not over-come by an uncorroborated statement that a document was submitted to BLM or by evidence that a document was timely filed with the local recording office, but may be rebutted by probative evidence corroborating receipt of the document by BLM. See Milton E. Kutil, 104 IBLA 396 (1988); Elizabeth D. Anne, 66 IBLA 126 (1982). The record before us contains sufficient corroborating evidence to rebut the presumption that the missing affidavit of assessment was not filed with BLM. see Milton E. Kutil, supra.

Appellant's cover letter establishes an intent to file evidence of assessment work for DVA Nos. 18 through 20. One may infer from the absence of the document from the case file either that appellant failed to include the affidavits for DVA Nos. 18 through 20 with the cover letter and other affidavits, or that BLM misplaced the document. With no reference to a missing document noted on the cover letter returned by BLM, appellant argues that one could only assume that all the documents were received. We think such a conclusion is justified under the circumstances.

In response to the filing of an affidavit of assessment, the BLM manual requires written acknowledgement that the document has been received. BLM manual: 3833 - Recordation of Mining Claims at 22 E. Receipt for Affidavit of Assessment Work, reads: "A receipt must be issued. In lieu of a receipt, a copy of the submitted evidence, with the date-stamp clearly shown, will be returned to the mailing claimant." BLM returned the cover letter to appellant as required by this provision. The purpose of 22 E is to acknowledge receipt of an affidavit of assessment. Obviously, the date-stamped cover letter was intended to serve as the receipt required by the manual provision. If all the documents were not included, then BLM could not issue a blanket receipt, rather it would have to distinguish which documents were not received. There is no notation on the copy of the letter submitted by appellant, or on the copy of the letter contained in the case file to contradict the obvious implication that all of the documents listed were included.

The return of the date-stamped copy of the cover letter to appellant was intended to acknowledge receipt of the proofs of labor listed therein, and, hence, we presume that no irregularities were connected with the filing, and that all documents listed in the cover letter were received.

Thus, as to DV No. 244, the BLM decision is set aside and remanded for action consistent herewith. The decision is reversed as it relates to DVA Nos. 18 through 20.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision of October 26, 1987, is hereby set aside and remanded in part and reversed in part.

Gail M. Frazier
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge